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No. 65

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

On Appeal from the Supreme Court of the State of Georgia.

BRIEF FOR THE APPELLANT

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PAGE

INDEX

	Page
Opinion below	1
Basis of jurisdiction	1
Statute involved	2
Questions presented	3
Statement of the case	3
Summary of argument	5
Argument	7
Conclusion	27
Proof of service	28

Cases Cited

Christmas v. *Russell*, 72 U.S. (5 Wall.) 290 (1886)	10
Douglas v. *New York*, N.H.&H. R.R.., 279 U.S. 377 (1929)	15
Easterlin v. *New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902)	7
Fauntleroy v. *Lum*, 210 U.S. 230 (1908)	8, 15
Great Western Tel. Co. v. *Purdy*, 162 U.S. 329 (1896)	11
Hughes v. *Fetter*, 341 U.S. 609 (1951)	5, 12, 21
Kenney v. *Supreme Lodge of the World*, 252 U.S. 411 (1920)	9
Kentucky Fin. Corp. v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923)	22
McKnett v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934)	16

Cases Cited (Continued)

Page

M'Elmoyle v. *Cohen*, 38 U.S. (13 Pet.) 312 (1839) 8

Metcalf v. *City of Watertown*, 153 U.S. 671 (1894) 11, 17

Milwaukee County v. *M. E. White Co.*, 296 U.S. 268 (1935) 8, 18

Mondou v. *New York, N.H.&H. R.R.*, 223 U.S. 1 (1912) 15

Power Mfg. Co. v. *Saunders*, 274 U.S. 490 (1927) 24

Roche v. *McDonald*, 275 U.S. 449 (1928) 8

Testa v. *Katt*, 330 U.S. 386 (1947) 15

Union Trust Co. v. *Grossman*, 245 U.S. 412 (1918) 15

Walters v. *City of St. Louis*, 347 U.S. 231 (1954) 20

Waterman v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887) 17

Watkins v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949) 20

Wells v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) 5, 12, 13

Constitutional Provisions and Statutes Cited

Art. IV, § 1 United States Constitution 2, 4, 12

Amend. XIV, § 1 United States Constitution 2, 4, 26

28 U.S.C. § 1257(2) 2

Cases Cited (Continued)

Page

28 U.S.C. § 1738 ..... 1, 3

Ga. Code § 3-701 (1933) 1, 2, 4, 5, 6, 7, 8, 18, 19, 21, 26, 27

Ga. Code § 110-1001 (1933), as amended by 1955 Ga. Laws, pp. 417, 418 7

Ga. Code § 110-1002 (1933) 7

Miscellaneous

CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963) 27

Currie, *The Constitution and the "Transitory" Cause of Action*, 73 HARV. L. REV. 36 (1959) 22

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PAGE

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BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion of the Supreme Court of the State of Georgia is reported in *Watkins* v. *Conway*, 221 Ga. 374, 144 S.E. 2d 721 (1965), and is printed at pages 10 through 12 of the Record.

BASIS OF JURISDICTION

This action was brought pursuant to 28 U.S.C. § 1738, and the common law of Georgia by Robert D. Watkins, appellant herein, to enforce a Florida judgment against J. F. Conway, appellee herein. Appellee defended on grounds that the five-year statute of limitations against foreign judgments, Ga. Code § 3-701, had run by one day, to which defense appellant interposed the objection that such statute was void and unconstitutional in

that it deprived appellant both of the guaranty of full faith and credit provided foreign judgments by Article IV, § 1, of the United States Constitution, and also, of the equal protection of the laws guaranteed by Amendment XIV, § 1, of the United States Constitution. Judgment of the Supreme Court of the State of Georgia (R. pp. 10-11) was dated and entered on September 22, 1965, affirming the trial court's decision that the statute was constitutional, and dismissing appellant's case. A motion for rehearing was filed by appellant on September 30, 1965, and was denied by the Georgia Supreme Court on October 7, 1965 (R. p. 10). Notice of appeal was filed in that court on November 29, 1965 (R. pp. 13-16).

The jurisdictional statement was filed in this Court on January 26, 1966, and probable jurisdiction was noted on March 21, 1966 (R. p. 16). *Watkins* v. *Conway*, 383 U.S. 941 (1966). The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by 28 U.S.C. § 1257(2).

STATUTE INVOLVED

The statute, the validity of which is challenged by appellant in this appeal, is Ga. Code § 3-701 (1933), and it provides:

> "Suits upon foreign judgments. — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

QUESTIONS PRESENTED

I.

Whether consistently with the full faith and credit clause, Georgia may apply a five-year statute of limitations to bar the enforcement of a foreign judgment while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an additional period of five years?

II.

Whether under the equal protection clause Georgia may discriminate against judgments rendered in the courts of other states, solely on the basis of their foreign origin, by applying a five-year statute of limitations to such judgments while permitting enforcement of Georgia judgments rendered at the same time under similar circumstances for an additional five-year period?

STATEMENT OF CASE

On October 5, 1955, the appellant, Robert D. Watkins, obtained a judgment against appellee, J. F. Conway, in the Circuit Court of the 15th Judicial District of the State of Florida. Thereafter, on October 5, 1960, five years and one day after the entry of this judgment, the appellant brought suit against appellee on this Florida judgment in the Superior Court of Fulton County, Georgia, pursuant to 28 U.S.C § 1738 and the common law of Georgia (R. p. 1).

The appellee pleaded the five-year statute of limita-

tions against foreign judgments prescribed by Ga. Code § 3-701 (1933) (R. pp. 2-3). Appellant moved to strike the plea of the statute of limitations on grounds that Ga. Code § 3-701 is unconstitutional and void, since it seeks to discriminate against foreign judgments by denying enforcement under circumstances in which enforcement of a Georgia judgment would be permitted, thereby violating both the full faith and credit clause (Art. IV, § 1, U. S. Const.) and the equal protection clause (Amend. XIV, § 1, U. S. Const.) of the Constitution (R. pp. 3-8). On June 1, 1965, the Superior Court of Fulton County granted appellee's motion for summary judgment on the sole ground that the Florida judgment was barred by the five-year statute of limitations of Ga. Code § 3-701, which the court found to be constitutional (R. pp. 9-10). Appellant's motion to strike was denied (R. pp. 9-10).

The appellant took a timely appeal to the Supreme Court of Georgia urging the unconstitutionality of the application of the five-year statute of limitations to bar the enforcement of the Florida judgment. On September 22, 1965, the Supreme Court of Georgia affirmed the decision of the trial court upholding the constitutionality of the statute (R. pp. 10-11). Although the Georgia Supreme Court recognized that the effect of its decision was to deny enforcement of appellant's Florida judgment under circumstances in which a Georgia judgment obtained at the same time would have been enforced, the court, nevertheless, held that the shorter period of limitations violated neither the full faith and credit clause nor the equal protection clause of the Constitution. Appellant's motion for rehearing was denied without opinion on October 7, 1965 (R. p. 12).

SUMMARY OF ARGUMENT

Under Georgia law domestic judgments remain enforceable for a period of ten years while the judgments of other states are enforceable for only five years. It is submitted that this five-year limitation period provided by Ga. Code § 3-701 (1933) violates both the full faith and credit clause and the equal protection clause of the Constitution since the effect of this statute is to allow the State of Georgia to discriminate in favor of its own judgments and against foreign judgments.

The right of a state to impose some limitation period against foreign judgments is not questioned in this case. It is clear that a state may apply a statute of limitations to foreign judgments, so long as it does so evenhandedly, without discrimination. However, the full faith and credit clause does prohibit the application of such statutes of limitation where they effect discrimination as to the period of enforcement in favor of domestic judgments.

Hughes v. *Fetter,* 341 U.S. 609 (1951) and *Wells* v. *Simonds Abrasive Co.,* 345 U.S. 514 (1953) perhaps best exemplify the numerous cases touching on the issue of discrimination with respect to the full faith and credit clause. In *Hughes* it was ruled that the full faith and credit clause required the State of Wisconsin to enforce a foreign state's wrongful death action, under circumstances in which Wisconsin would have allowed an action for wrongful death occurring in Wisconsin. The rationale in *Hughes* was crystalized shortly thereafter in the *Wells* case. In *Wells,* suit was brought in Pennsylvania based upon a wrongful death occurring in Alabama. Pennsylvania applied a one-year statute

of limitations to all wrongful death actions, either domestic or foreign, while Alabama imposed a two-year statute of limitations. In rejecting the plaintiff's contention that *Hughes* required the two-year Alabama limitation period to be applied rather than the one-year Pennsylvania period, this Court stated at 518:

> "Our decisions in Hughes v. Fetter . . . and First National Bank v. United Air Lines . . . do not call for a change in the well-established rule that the forum state is permitted to apply its own period of limitation. *The crucial factor in those two cases was that the forum laid an uneven hand on causes of action arising within and without the forum state. Causes of action arising in sister states were discriminated against. Here Pennsylvania applies her one-year limitation to all wrongful death actions wherever they may arise.*" (Emphasis added.)

It is implicit from the *Hughes* and *Wells* decisions that statutes of limitation which discriminate against foreign causes of action or suits on foreign judgments are unconstitutional under the full faith and credit clause. A state may not allow a longer period of enforceability for its own judgments than it allows foreign judgments.

By the same token the discriminatory treatment inherent in Ga. Code § 3-701 denies to holders of foreign judgments the equal protection of the laws which is guaranteed by the Fourteenth Amendment. The effect of the Georgia statute is undoubtedly a purposeful and systematic discrimination designed to favor hold-

ers of domestic judgments over holders of the judgments granted in other states. Discrimination can be justified under the equal protection clause only if there are reasonable differences between the favored and disfavored classes which justify an unequal classification. There is no reasonable basis for differences in classification in the instant case. The fact that the mode of enforcement of a foreign judgment is different from the mode of enforcement of a domestic judgment does not justify the classification of the Georgia statute. Certainly no justification can be found in the source of the judgment, i.e., a court of a sister state. Thus, no reason can be assigned for the discriminatory enforcement provisions in the instant situation, and, accordingly, they constitute a denial of equal protection of the laws guaranteed by the Fourteenth Amendment.

ARGUMENT

Under Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418, and Ga. Code § 110-1002 (1933), a Georgia judgment remains enforceable for a period of ten years without the requirement of any action on the plaintiff's part.[1] But, by virtue of the statute in question, Ga. Code § 3-701 (1933), a foreign state's

[1] If within seven years the holder of the Georgia domestic judgment merely issues an execution (attempts to levy) upon the judgment, and records the execution upon the general execution docket, the judgment will be renewed for another seven years, and this process may be repeated indefinitely. Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418. See *Easterlin* v. *New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902). If no action is taken within seven years, then the domestic judgment becomes dormant, but the holder may revive it by bringing suit on the dormant judgment within three years. Ga. Code § 110-1002 (1933).

judgment becomes unenforceable after five years. It is clear, therefore, that the State of Georgia has discriminated against foreign judgments in favor of its own judgments. It is appellant's contention that such discrimination deprives him both of the full faith and credit guaranteed foreign judgments and also of the equal protection of the laws to which he is entitled under the Constitution of the United States.

A. Georgia Code § 3-701 (1933), which Discriminates Against Foreign Judgments by Providing a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Violates the Full Faith and Credit Clause of the Constitution.

The full faith and credit clause requires the State of Georgia to give the *same effect* to a Florida judgment, that the State of Florida itself would give.[2] However, a state is not precluded from applying a reasonable statute of limitations to foreign judgments. Otherwise stated, a state may apply a statute of limitations on foreign judgments if and only if the statute of limitations would not discriminate in favor of its own domestic judgments — that is, only if domestic judgments are not allowed to be enforced for a longer period of time than foreign judgments.

Thus in *M'Elmoyle* v. *Cohen*, 38 U.S. (13 Pet.) 312 (1839), this Court held that the forum state (Georgia) might apply its own statute of limitations to a foreign

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[2]See, e.g. *Milwaukee County* v. *M. E. White, Co.*, 296 U.S. 268 (1935); *Roche v. McDonald*, 275 U.S. 449, 451-52 (1928); *Fauntleroy* v. *Lum*, 210 U.S. 230 (1908).

judgment. The Court based its holding on the reasoning *that the statute of limitations was a plea to the remedy, not to the merits of the cause of action,* and consequently, would bar the cause.[3] The Court's rationale was that the forum state may legislate limitations upon the remedy, (*i.e.*, procedural limitations), although it could not legislate any limitations upon the merits of the foreign judgment. Subsequent cases have upheld the viewpoint that states may, consistent with full faith and credit, legislate upon the remedy in regard to the enforcement of foreign judgments and causes of action, but only if the foreign judgment or cause of action is not discriminated against. Where such discrimination exists the guaranty of full faith and credit is violated.

For example, in *Kenney* v. *Supreme Lodge of the World,* 252 U.S. 411 (1920), this Court held that a state statute prohibiting actions for death occurring in other

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[3]This case involved substantially the same Georgia statute (prior to minor amendments) at issue in the instant case. However, the only argument presented in that case was the right of Georgia to prescribe *any* limitation at all upon the right of the holder of a foreign judgment to sue in Georgia courts. Plaintiff argued that the State of Georgia had no right to place *any* limitation upon the enforcement of foreign judgments, and this argument was rejected. In rebutting this argument, both defendant and the Court noted (in dicta) that the State of Georgia had the power to place a limitation upon the period of enforcement of its own judgments, and consequently, should have the power to place a limitation upon foreign judgments. While this Court was aware of differences in the two time periods of limitation, the issue of discrimination was not presented to or examined by the Court; therefore, it is clear that *M'Elmoyle* only holds that the State of Georgia can apply a reasonable statute of limitations against foreign judgments. It is submitted that the authorities hereinafter discussed clearly demonstrate that such a limitation is unreasonable and a denial of full faith and credit where a longer period of enforceability is proscribed for domestic judgments.

states, construed as depriving the courts of the state of jurisdiction of an action on a judgment obtained in another state on a cause of action for wrongful death, violated the full faith and credit clause of the United States Constitution. It was argued that since the statute merely withdrew jurisdiction from the former court to entertain suits on foreign judgments for wrongful death, *and since thus the statute merely affected the remedy and not the right,* the statute was not in violation of the full faith and credit clause. In rejecting this argument the Court stated at 414-15:

> "Moreover, no doubt there is truth in the proposition that the Constitution does not require the State to furnish a Court. But it is also true that there are limits to the power of exclusion . . . *[I]t is plain that a State cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to Courts otherwise competent.*" (Emphasis added.)

Similarly in *Christmas* v. *Russell,* 72 U.S. (5 Wall.) 290 (1886), a Mississippi statute provided that where the cause of action which led to the foreign judgment would not have been barred by the Mississippi statute of limitations, the judgment would be enforced; but if the underlying cause of action would have been barred in the Mississippi tribunals under its statute of limitations, then the suit on the judgment would also be barred. This Court held that under the full faith and credit clause, Mississippi had no power to enforce such a statute of limitations. Thus, a state may not place a limitation (such as a statute of limitations) on

the remedy, where that limitation operates in a discriminatory manner in favor of its own interests.

In *Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896) (one of the two cases cited by the Georgia Supreme Court[4]), there was some question as to whether plaintiff was suing on a contract or on a foreign judgment recovered by reason of that contract. This Court construed the action to be based on contract since the foreign judgment was invalid by reason of failure of service, and, then, held that the suit was barred by the forum state's statute of limitations. In applying the forum state's statute of limitations, the Court was careful to emphasize that no attempt had been made to discriminate against the foreign claim:

> "The limitation of actions is governed by the *lex fori*, and is controlled by the legislation of the state in which the action is brought, as construed by the highest court of that state, even if the legislative act or the judicial construction differs from that prevailing on other jurisdictions. . . .
>
> "*Neither the statutes nor the decisions of the state of Iowa* [*the forum state*] *upon this subject have made any discrimination against the citizens, the contracts, or the judgments of other states, or against any right asserted under the constitution or laws of the United States. The case is thus distinguished from Christmas v. Russell, 5 Wall. 290, cited at the bar.* [In which discrimination against certain

[4]The other case, *Metcalf* v. *City of Watertown*, is discussed *infra* at footnote 6, and also supports appellant's contention.

> specific foreign judgments was held to be unconstitutional.]" Id. at 339. (Emphasis added.)

The language of the Court makes inescapable the conclusion that if there had been discrimination involved — that is, if the statute of limitations applied against foreign causes of action or judgments had been for a shorter period than the statute of limitations against local causes of action or judgments — such a statute of limitation would be unconstitutional.

It is submitted that *Hughes* v. *Fetter*, 341 U.S. 609 (1951) and *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953), read together, emphatically demand a finding that full faith and credit has been denied in the instant case. In *Hughes*, plaintiff, basing his complaint on an Illinois wrongful death statute, brought an action in a Wisconsin state court to recover damages for the death of a man who was fatally injured in an automobile accident in Illinois. The trial court held that a Wisconsin statute, which created a right of action only for deaths in that state, established a local policy against Wisconsin's entertaining suits brought under the wrongful death acts of other states and dismissed the action. The Wisconsin Supreme Court affirmed, notwithstanding the contention that the local statute, so construed, violated the full faith and credit clause of Article IV, § 1 of the Constitution. In overruling the Wisconsin decision, this Court stated at 611:

> "We are called upon to decide the narrow question whether Wisconsin, over the objection raised, can close the doors of its courts to the cause of action created by the Illinois wrong-

> ful death act. . . . It is also settled that Wisconsin cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent."

Thus, this Court held that Wisconsin was under an obligation to enforce the Illinois wrongful death action. It was ruled that Wisconsin had no strong policy against wrongful death actions as evidenced by the fact that it allowed an action for wrongful death occurring in Wisconsin, and that consequently, the full faith and credit clause required Wisconsin to enforce the out-of-state cause of action.

Subsequently, in *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) suit was brought in Pennsylvania for a death occurring in Alabama. The Alabama statute of limitations for a wrongful death action was two years while the Pennsylvania statute of limitations was one year. The action was brought in less than two years, but after one year had passed. The District Court of Pennsylvania had applied the Pennsylvania statute of limitations and dismissed the action. The plaintiff relied on the *Hughes* case, stating that under that case the forum state was required to enforce an out-of-state wrongful death action. The Court citing *M'Elmoyle* v. *Cohen, supra* at page 8, stated that long ago it had held that applying the statute of limitations of the forum to a foreign substantive right did not deny full faith and credit; and it further noted at 517:

> "The rule that the limitations of the forum apply (which this Court has said meets th re-

quirements of full faith and credit) is the usual conflicts rule of the states. . . .

". . . . Our prevailing rule is that the Full Faith and Credit Clause does not compel the forum state to use the period of limitation of a foreign state."

This Court emphasized, however, at 518:

"Our decisions in Hughes v. Fetter . . . and First National Bank v. United Air Lines . . . do not call for a change in the well-established rule that the forum state is permitted to apply its own period of limitation. *The crucial factor in those two cases was that the forum laid an uneven hand on causes of action arising within and without the forum state. Causes of action arising in sister states were discriminated against. Here Pennsylvania applies her one-year limitation to all wrongful death actions wherever they may arise.*" (Emphasis added.)

Thus, *Wells* reinforces the proposition that statutes of limitation which discriminate against foreign causes of action or suits on foreign judgments are unconstitutional under the full faith and credit clause. A state may certainly apply its own statute of limitations to foreign judgments, but if it does so, it must not discriminate. It cannot grant its own judgments a longer period of enforceability than it allows foreign judgments.

The error of the Georgia Supreme Court in its rul-

ing in this case is magnified by the fact that the full faith and credit clause is applied even more stringently to foreign judgments than to foreign causes of action.[5] *Hughes* and *Wells* demonstrate that the full faith and credit clause clearly prohibits states from discriminating against *causes of action* arising under the laws of sister states. *A fortiori*, a state may not discriminate against *foreign judgments* under circumstances in which domestic judgments, rendered at the same time, would be enforced.

Analogous considerations have prohibited discrimination against Federally-created causes of action. A state may not refuse to enforce the laws of another sovereign while enforcing its own similar laws. Thus, while a state court, under the *supremacy clause* (as opposed to the full faith and credit clause) of the Constitution is obligated to enforce Federal law [*Testa* v. *Katt*, 330 U.S. 386 (1947)], on matters going *to the remedy* rather than the right, a state court is under no obligation to enforce Federal law as long as it does not discriminate between Federal law and state law. Consequently, in *Mondou* v. *New York, N.H.&H. R.R.*, 223 U.S. 1 (1912), in accord with *Testa*, an action to enforce rights arising under the Federal Employers' Liability Act could not be declined by the courts of the state merely because the suit was based upon a Federally created cause of action. In *Douglas* v. *New York, N.H. & H.R.R.*, 279 U.S. 377 (1929), however, the New

[5] *Compare Union Trust Co.* v. *Grossman*, 245 U.S. 412 (1918) *with Fauntleroy* v. *Lum*, 210 U.S. 230 (1908). In *Union Trust*, it was held that states, may for reasons of public policy, close their courts to *suits on causes of action* which the state deems contrary to its public policy. However, in *Fauntleroy* the forum state was required by this Court to enforce *a judgment* based upon a cause of action repugnant to the public policy of that state.

York courts were permitted to dismiss an action under the Federal Employers' Liability Act brought by a Connecticut resident against a Connecticut corporation based on an accident occurring in Connecticut. A New York statute permitted actions by non-residents against a foreign corporation only in certain classes of cases, of which this was not one. The Court held that New York was not obligated to enforce Federal law in this situation. State and Federal actions were treated equally. In *McKnett* v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934), an Alabama statute had opened the doors of Alabama courts to suits against foreign corporations arising under the laws of other states. This statute superseded the previous rule of decision that no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action arose in Alabama. This Court reversed the Alabama Supreme Court's dismissal of an action based on an out-of-state accident arising under the Federal Employers' Liability Act. The Alabama Supreme Court had held that the statute in question lifted the trial bar only for causes of action arising under the laws of sister states, and not under Federal law. The defendant insisted that the statute as construed was consistent with the Federal Constitution since the state could determine the limits of the jurisdiction of its courts, *i.e.*, in effect, stating that Alabama could regulate the remedy. This Court stated at 233-34:

> "While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, Douglas v. New York, New Haven & Hartford R. R. Co. . : . the Federal Constitution prohibits state courts of general jurisdiction from

refusing to do so solely because the suit is brought under a federal law. *The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced.* The plaintiff is cast out because he is suing to enforce a federal act. *A state may not discriminate against rights arising under federal laws.*"[6] (Emphasis added)

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[6]The Supreme Court of Georgia erroneously cited as authority for its ruling that the full faith and credit clause was not violated, the case of *Metcalf* v. *City of Watertown*, 153 U.S. 671 (1894). This case did not involve the applicability of the statute of limitations against foreign judgments. Rather it involved the questions of the constitutionality and the applicable period of limitations against judgments of Federal courts within the forum state. A Wisconsin statute was subject to some ambiguity as to whether judgments of Wisconsin Federal courts were prescribed by the same time period as judgments of the State courts of Wisconsin. There was a Wisconsin Supreme Court case, however, [*Waterman* v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887)] which held that a shorter period of limitations applied to the judgments of the Wisconsin Federal courts than to judgments of Wisconsin's state courts. Notwithstanding this holding, the United States Supreme Court indicated that if the Supreme Court of Wisconsin had been faced with this question again they would have decided otherwise. The Supreme Court cites some other Wisconsin authorities which are not directly on point to reinforce its position and then states at 681, 14 Sup. Ct. at 951:

> *"Moreover, it should be observed that the question of the power under the constitution to control in any way or to discriminate as to federal judgments rendered in the state does not seem to have been brought to the attention of the court [in Waterman], and was not adverted to."* (Emphasis added.)

The Court further states at 683:

> "We cannot attribute to the legislature of Wisconsin any design to discriminate against the judgments and decrees of the courts of the United States rendered in that state by reducing the statutory period for the commencement of actions thereon to a less number of years than obtained as to the judgments and decrees of the state courts. . . ."

It is clear from this decision that this Court was forced to reinterpret a Wisconsin statute, and, in effect, overrule the

Analogous considerations which underlie the full faith and credit clause prohibit a state from discriminating against judgments taken in other states. Discrimination based merely on the source of the judgment is invalid. A plaintiff should not be defeated merely because he has taken his judgment in another state rather than in the forum state. Although a state has a power to control the remedy by such means as a statute of limitations, it cannot discriminate against judgments of other states in so doing.

It cannot be denied that the State of Georgia has discriminated against foreign judgments. Following the *Hughes* and *Wells* cases and other authorities heretofore discussed, the conclusion is, therefore, inescapable that Ga. Code § 3-701 (1933) violates the full faith and credit clause.

> "The very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."

Milwaukee County v. *M. E. White Co.*, 296 U.S. 268, 276-7 (1935). To allow the various states to discriminate against foreign judgments by imposing shorter pe-

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Wisconsin Supreme Court's interpretation of its own statute, primarily on the basis that any other interpretation would be unconstitutional due to the fact that the other interpretation would effect discrimination against Federal judgments.

riods of limitation would impair the very purpose and effectiveness of the full faith and credit clause. Thus, it is submitted that Ga. Code § 3-701 (1933) violates the full faith and credit clause and is, therefore, unconstitutional since it discriminates in favor of Georgia judgments and against out-of-state judgments.

B. Georgia Code § 3-701 (1933), Which Provides a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Violates the Equal Protection Clause of the 14th Amendment in that it Arbitrarily Discriminates Against those Suitors in Georgia Courts Who Sue on Foreign Judgments.

The question of a forum state's refusal to enforce valid foreign judgments has, of course, been before this Court on countless occasions and the resolution of the questions presented in such cases has always been based upon the full faith and credit clause. The precise question presented in this petition has never been before this Court, and, since it involves the State's refusal to enforce a foreign judgment under circumstances in which a domestic judgment could be enforced, this Court could, therefore, find substantial historical justification for basing its decision upon the full faith and credit clause. Although there exists an obvious violation of full faith and credit practiced by Ga. Code § 3-701 (1933), it is also equally apparent the Georgia statute offends the equal protection clause of the Constitution.

The language of the equal protection clause — "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws" — clearly condemns Georgia's refusal to enforce appellant's judgment when a similarly situated holder of a Georgia judgment would be allowed to enforce his judgment. This statute undoubtedly effects a purposeful and systematic discrimination designed to favor one individual or class over another. *Watkins* v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949). In order to justify such discrimination, the individuals or classes discriminated against must be the subject of a classification based upon reasonable differences between the favored and disfavored individuals or classes. See, *e.g.*, *Walters* v. *City of St. Louis*, 347 U.S. 231, 237 (1954). No such difference between petitioner and a similarly situated holder of a Georgia judgment has been suggested; certainly only the most fertile imagination could conjure up a reason for the classification found in the Georgia statute. Can justification for the uneven treatment be found in (1) the fact that petitioner holds a foreign rather than a domestic judgment and (2) the fact that petitioner must enforce his judgment by bringing an action in Georgia whereas the holder of a Georgia judgment could enforce his judgment simply by levy or other distraint? Certainly, as a practical matter, neither the source of the judgment nor the mode of its enforcement provide reasonable bases for the Georgia classification. As illustrated by the cases discussed previously, in the full faith and credit area the source of the judgment alone is no reason for classification, and it is correspondingly apparent that a discrimination based on the source of the judgment must also constitute a de-

nial of equal protection of the laws. Similarly, the mode which must be employed to enforce the judgment affords no real basis for the Georgia classification. Thus, it is clear that the classification is arbitrary, and the resulting discrimination, therefore, transgresses the equal protection clause.

Although it is vigorously submitted that Ga. Code § 3-701 (1933) violates the full faith and credit clause, appellant believes that the Georgia classification found therein also constitutes a basic and classic example of denial of equal protection of the laws. Indeed, Professor Currie, for one, found such cases as *Hughes* v. *Fetter*, 341 U.S. 609 (1951) to be most appropriately considered as equal protection cases. In his analysis of *Hughes*, he stated:

> "The inescapable fact is that Wisconsin, in its wrongful-death statute, established a policy for the protection of Wisconsin residents generally, and then excluded from the protection of that policy a certain class of residents: those whose deaths resulted from injuries received elsewhere. Since no constitutionally tenable policy of the state relating either to the administration of its courts or to any of its other governmental concerns can be suggested which can justify this classification, the classification is arbitrary and capricious. The vice, therefore, of the state action in *Hughes* v. *Fetter* was that it denied to members of the disfavored class the equal protection of the laws. The reliance of the Supreme Court on the full-faith-and-credit clause was both unnecessary and confusing."

Currie, *The Constitution and the "Transitory" Cause of Action*, 73 HARV. L. REV. 36, 60-61 (1959). Doubtless, the reliance of the Court upon the full faith and credit clause in the *Hughes* decision has historical justification, but certainly the logic of constitutional theory would be advanced by recognizing that *Hughes* v. *Fetter* is based implicitly upon those concepts inherent in equal protection.

While there are no cases in which the enforcement of judgments has been keyed to the equal protection clause, this court has in other situations indicated the peculiar applicability of the equal protection clause to the instant case. In *Kentucky Fin. Corp.* v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923), this Court reviewed and reversed a decision of the Supreme Court of Wisconsin. There, a Kentucky corporation brought an action of replevin in Wisconsin to recover an automobile unlawfully taken from its possession by a third person and sold to the defendant in Wisconsin. The plaintiff did no business in Wisconsin. Pursuant to a Wisconsin statute, the defendant obtained an order requiring the plaintiff's secretary, who resided and was employed in Louisville, Kentucky, to appear in Milwaukee for pre-trial examination and to bring with him all relevant files and records. When the secretary, with the plaintiff's approval, refused to comply with the order, the complaint was stricken and the action was dismissed. Noting that the Wisconsin statute applied only to foreign corporations and that such an examination could not be ordered with respect to residents of Wisconsin, be they corporation or individual, or to non-resident individuals, the Court asserted:

> "No doubt a corporation of one state seeking relief in the courts of another must conform to the prevailing modes of proceeding in those courts and submit to reasonable rules respecting the payment of costs or giving security therefor and the like . . . but it cannot be subjected, *merely because it is such* [*foreign*] *a corporation, to onerous requirements having no reasonable support in that fact and not laid on other suitors in like situations. Here the statute authorized the imposition, and there was imposed, on the plaintiff a highly burdensome requirement because of its corporate origin* — a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary. There could be no reason for requiring a corporate resident of Louisville to send its secretary, papers, files, and books to Milwaukee for the purposes of an adversary examination that would not apply equally to an individual resident of Louisville in a like case. The discrimination is further illustrated by the provision that as to all residents of Wisconsin, individual and corporate, the examination should be had in the county of their residence, no matter what its distance from the place of the suit." (Emphasis added.)

262 U.S. at 551.

As shown by the above quotation, the precise basis for the decision was that the statute discriminated arbitrarily against foreign corporations. Moreover,

the case provides a complete analogy to the instant situation, since petitioner has been denied the right to enforce his judgment in the Georgia courts, because it is a foreign judgment. To paraphrase, he cannot be subjected, simply because he is the holder of a *foreign* judgment "to onerous requirements having no reasonable support in that fact and not laid on other suitors in like situations."

Another of this Court's decisions also provides an analogy to the instant case: *Power Mfg. Co.* v. *Saunders*, 274 U.S. 490 (1927). That was a personal injury action by the plaintiff against an Ohio corporation doing business in Arkansas where plaintiff's injury occurred. Defendant had complied with the Arkansas requirements to do business in that state and had designated an agent for service of process as well as a principal office. It did no business and had no officer or agent elsewhere in the state. Suit was filed by the plaintiff in a county other than the designated one which eventually resulted in a judgment for the plaintiff. The Arkansas venue statute allowed suit to be brought against a foreign corporation doing business in Arkansas in any county, but limited the venue of actions against domestic corporations to a county in which it had a place of business or in which its chief officer resided. Actions against individuals were required to be brought in the county where the individual resided or could be found.

This Court found that the Arkansas venue statute denied the foreign corporation equal protection of the laws because it was "very plain that the statutes discriminate against foreign corporations, and in favor of domestic corporations and individuals, and that the

discrimination is not theoretical merely, but real and substantial." 274 U.S. at 493. The Court reasoned:

> "No doubt there are subjects as to which corporations admissibly may be classified separately from individuals and accorded different treatment, and also subjects as to which foreign corporations may be classified separately from both individuals and domestic corporations and dealt with differently. But there are other subjects as to which such a course is not admissible; *the distinguishing principle being that classification must rest on differences pertinent to the subject in respect of which the classification is made.*
>
> "Here the separate classification of foreign corporations is in respect of the venue or place of bringing transitory actions. The statutes mean foreign corporations doing business within the state by her permission, and therefore having a fixed place of business therein and a resident agent on whom process may be served. We speak only of them. *So far as their situation has any pertinence to the venue of transitory actions, it is not distinguishable from that of domestic corporations and individuals. Certainly there is no substantial difference. The opinion of the state court does not point to any relevant distinction, nor have counsel suggested any. Of course the restricted venue as to domestic corporations and individuals is prompted by considerations of convenience and economy; but these considerations have equal application to foreign cor-*

porations. So far as the plaintiffs in such actions are affected, it is apparent that there is no more reason for a statewide venue when the action is against a foreign corporation than when it is against a domestic corporation or a natural person. So we conclude that the special classification and discriminatory treatment of foreign corporations are without reasonable basis and essentially arbitrary." (Emphasis added.)

274 U.S. at 493-94.

This reasoning is likewise applicable to the present case. There is no reason for discriminating against foreign judgments in favor of domestic judgments by granting a longer period of enforcement for the latter. The only basis for the classification which can be perceived is that the judgments are foreign rather than domestic, and this, of course, is no reason at all. It is then clear that the classification found in Ga. Code § 3-701 (1933) is arbitrary and constitutes a denial of equal protection of the laws guaranteed by the 14th Amendment to the Constitution.[7]

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[7]Although it can in truth be said that this portion of the application for an appeal lacks direct decisional support, this dearth of authority is perhaps best explained by Professor Currie:

"Conflict-of-laws cases in which the Equal Protection Clause has been a decisive factor have been rare indeed. Legislatures seldom enact laws for the sole benefit of local citizens or residents; courts are not disposed to interpret laws so as to give such effect. In part this may be true because the effect of the Equal Protection Clause is so clear; in greater part it seems a result of a distaste for discrimination, independent of constitutional prohibitions. It is fair to say that the traditional system of conflict of laws has tended to minimize cases of outright discrimination in the realm

CONCLUSION

Appellant respectfully requests that the decision of the Supreme Court of Georgia be reversed and that Ga. Code § 3-701 (1933) be declared unconstitutional.

Respectfully submitted,

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of private law, thanks to its utilization of neutral and impersonal choice-of-law rules. It is difficult to cite cases in support of the elementary proposition that a law providing benefits for local citizens must in general provide the same benefits for nonresidents, including aliens, similarly situated."
CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS, 526, 541 (1963).

PROOF OF SERVICE

Emmet J. Bondurant, attorney for Robert D. Watkins, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on this 23rd day of August, 1966, I served a copy of the foregoing Brief for Appellant on the Appellee therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Martin McFarland, 808 William-Oliver Building, Atlanta, Georgia, 30303.

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